

Judge: Timothy W. Dore
Chapter: 13
Hearing Date: August 16, 2023
Hearing Time: 9:30 a.m.
Hearing Location:
U.S. Bankruptcy Court
700 Stewart St #8106
Seattle, WA 98101
Response Date: August 9, 2023

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

EMILIE VILLA-IGNACIO PADIERNOS,

Debtor.

IN CHAPTER 13 PROCEEDING
No. 20-11939-TWD

RESPONSE TO DEBTOR'S MOTION
FOR APPROVAL TO DISBURSE
HOMEOWNER ASSISTANCE FUNDS
(HAF) GRANT AND FOR WILLFUL
VIOLATIONS OF THE AUTOMATIC
STAY AND FRBP 3002.1

Jason Wilson-Aguilar, Chapter 13 Trustee, responds to the debtor's Motion for Approval to Disburse Homeowner Assistance Funds (HAF) Grant and for Willful Violations of the Automatic Stay and FRBP 3002.1 (ECF No. 81):

The debtor is bound by her plan. 11 U.S.C. §1327(a); *United States Aid Funds, Inc. v. Espinosa (In re Espinosa)*, 559 U.S. 260 (2010). The debtor's confirmed plan provides for the Trustee to make both the cure and maintenance payments to Select Portfolio Servicing (ECF Claim No. 3) and Northgate West Condominium Association (ECF Claim No. 11) from the debtor's plan payments. That provision is consistent with the Court's Local Rules, which provide that the Trustee shall make both the cure and maintenance payments on delinquent mortgages and condominium association dues unless otherwise ordered by the Court after the debtor justifies an exception. *See* Local Rules W.D. Wash. Bankr. 3015-1(j).

The Trustee does not intend to impede the debtor's ability to access the HAF Grant, but the Trustee has repeatedly pointed out the problems that arise when debtors make direct payments on delinquent obligations. Regarding HAF Grants themselves, the Trustee has pointed

RESPONSE TO DEBTOR'S MOTION FOR
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ASSISTANCE FUNDS (HAF) GRANT - 1

Case 20-11939-TWD Doc 85 Filed 07/17/23 Ent. 07/17/23 16:46:39 Pg. 1 of 3

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1 out numerous problems when the Trustee does not make the payments to the servicers / creditors.
2 *See In re Rodriguez*, Chapter 13 Bankruptcy Case No. 19-13103-TWD (ECF Nos. 82 and 96).

3 The Trustee finds it perplexing (although perhaps not surprising) that the Washington
4 State Housing Finance Commission failed to consider borrowers who are in Chapter 13
5 bankruptcy cases when implementing this program, which is detrimental specifically to Chapter
6 13 debtors and more generally to the taxpayers who are ultimately funding these grants. The
7 Trustee fully understands that the debtor and her counsel are operating within the Housing
8 Commission's guidelines, but the negative ramifications of the Housing Finance Commission's
9 failure to consider Chapter 13 debtors and cases are evident in this case and were evident in *In re*
10 *Rodriguez*, Chapter 13 Bankruptcy Case No. 19-13103-TWD.

11 Northgate West filed a proof of claim that included \$4,707.90 in pre-petition arrearages
12 (ECF Claim No. 11) and it also filed notices of post-petition fees totaling \$6,467.50. *See Notice*
13 *of Postpetition Mortgage Fees, Expenses, and Charges* filed January 11, 2021 and November 15,
14 2021. Based on the Trustee's records, the amount still owed on the pre-petition arrearage is
15 \$2,240.46. Despite the figures in the proof of claim and notices of fees, Northgate West's May
16 11, 2023 asserted payoff statement totals a rather inexplicable \$30,985.31 (ECF No. 84-1).

17 The Trustee developed a form of order to hopefully assist debtors through the process of
18 requesting HAF Grants. This proposed order is subject to ongoing revisions as this process
19 develops, but a copy of the Trustee's suggested proposed order is attached. Leaving aside the
20 issues between the debtor and Northgate West; whether the debtor can obtain the types of relief
21 requested though this type of motion; and whether the proposed order is consistent with the bases
22 included the motion and the requests for relief, the Trustee objects to debtor's proposed form of
23 order (ECF No. 81-2).

24 The debtor's proposed order (ECF No. 81-2) fails to provide that the Housing Finance
25 Commission, the debtor and / or her attorney will file a sworn declaration (1) attesting to (a) the
26 exact amount the Housing Finance Commission paid to Select Portfolio Servicing and Northgate
27 West Condominium; (b) when the funds were paid; and (c) to whom; and (2) that includes the
28 properly redacted statement and / or reinstatement on which the Housing Commission based its

1 decision on how much to disburse. While the debtor's proposed order provides some of these
2 elements, it needs to include them all so that the Trustee has all the information he needs for
3 administration of the debtor's plan. Again, these problems are arising because the payments will
4 not be made by the Trustee as they should be.

5 WHEREFORE, the Chapter 13 Trustee requests that the Court grant or deny the debtor's
6 Motion for Approval to Disburse Homeowner Assistance Funds (HAF) Grant and for Willful
7 Violations of the Automatic Stay and FRBP 3002.1 (ECF No. 81), as the Court finds appropriate.
8 If the Court grants the motion, however, the Trustee requests that the order be consistent with the
9 Trustee's attached suggested form of order.

10
11 Dated this 17th day of July 2023

12 /s/ Jason Wilson-Aguilar, WSBA #33582
13 JASON WILSON-AGUILAR
14 Chapter 13 Trustee
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